

RESOLUTION NO. 2015 - 39

A RESOLUTION OF THE CITY OF SEARCY, ARKANSAS, AUTHORIZING
THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT
CONCERNING THE DISPOSITION OF COMPOST CENTER WASTE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEARCY, TO-WIT:

WHEREAS, the City of Searcy has received a proposed Agreement for the disposition of compost center waste with George Henderson, d/b/a Henderson Trucking (“Henderson”); and

WHEREAS, Henderson has agreed to remove the compost center waste.

WHEREAS, a specimen of the Agreement between Henderson and the City of Searcy has been provided to the Searcy City Council.

NOW, THEREFORE, be it resolved by the City Council of the City of Searcy, Arkansas, to-wit:

Section 1. That the Mayor and City Clerk are authorized and directed to negotiate, execute, and perform under the terms of, an agreement between the City of Searcy and Henderson for the removal of compost center waste pursuant to an agreement in substance similar to that presented to the Searcy City Council and to take all actions determined by them, in their sole and exclusive discretion, to be necessary and proper with respect to all such actions.

Section 2. This resolution shall take effect immediately.

PASSED AND ADOPTED this 13th day of October, 2015.

/s/ David Morris
Mayor

ATTEST:

/s/ Jerry Morris
City Clerk

AGREEMENT

This agreement is made and entered into on October 13, 2015, between the CITY OF SEARCY (the "City") and George Henderson, d/b/a George Henderson Trucking ("Henderson")

WHEREAS, the City operates a compost center wherein certain waste is ground into mulch and other composting materials (the "Waste") and

WHEREAS, the operation of the compost center generates greater Waste than can be utilized by the citizens of the City; and

WHEREAS, Henderson wishes to remove the Waste.

NOW, THEREFORE, the City and Henderson wish to provide for the provision of the Waste to Henderson pursuant to the following:

1. The City shall make the Waste available to Henderson for removal at a time agreed upon by the City and Henderson. The City reserves the right to limit access to the Waste in order to provide mulch or other fill material to the citizens of the City of Searcy.
2. Henderson shall provide all necessary equipment to load and haul the Waste including, without limitation, loader, trailers, trucks and employees. The City may elect to provide storage facilities and access to the compost center to permit Henderson to load and remove the Waste at a time that shall not conflict with the operation of the compost center by the City.
3. The City shall secure the compost center but may provide to Henderson access to the compost center during non-business hours as may be permitted by the City.
4. Henderson shall indemnify and hold the City harmless for its use of the compost center and for any subsequent use of the Waste. The city provides the Waste to Henderson "AS-IS" "WHERE IS" AND WITH ALL FAULTS" and disclaims all warranties whether express or implied and including any warranty of

fitness for a particular purpose and Henderson accepts the Waste without any warranty. Nothing herein shall serve to waive, limit, alter or amend any right of the City to defend any action under a claim of sovereign immunity and there are no third party beneficiaries under this Agreement.

5. Henderson shall obtain and maintain in a form reasonably acceptable to the City, a commercial policy of insurance in an amount not less than One Million Dollars (\$1,000,000.00) covering the operation of Henderson at the compost center. Henderson shall, further, obtain and maintain all applicable workers' compensation or other, similar coverage for operations related to this Agreement. Henderson shall pay, on or before default, all assessments related to its operation at the compost center and with respect to all equipment used at the compost center.
6. The term of this Agreement shall renew after the initial 5 year term for successive periods of one (1) year unless either party shall afford to the other not less than ninety (90) days written notice of its intent to terminate this agreement.
7. Notices to be given hereunder shall be deemed to be given when the writing evidencing such notice shall be delivered to the then-current Mayor, with respect to the City, and any then-current officer of Henderson.
8. Henderson shall maintain its equipment used at the compost center in a manner reasonably acceptable to the City.
9. Nothing herein shall serve to construe this Agreement as a joint venture or partnership of the City and Henderson.

10. Notwithstanding any provision herein to the contrary, this Agreement may be terminated by the City or Henderson after the initial term hereof upon ninety (90) days notice to the other.

11. This Agreement shall be construed under the laws of the State of Arkansas. This Agreement reflects the entire agreement between the parties with respect to the subject matter hereof and no other evidence of any negotiations shall be admissible to vary the express terms hereof.

12. This Agreement, and the rights conferred hereunder, shall not be assignable by Henderson to any entity without the express consent of the City. The City may assign this Agreement in the event that it ceases operation of the Compost Center.

The City of Searcy, Arkansas

By: /s/ David Morris

Mayor

Attest:

/s/ Jerry Morris
City Clerk

George Henderson, d/b/a Henderson Trucking

By: /s/ George Henderson
George Henderson